HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Company Petition 06 of 2004
In
Compnay application NO. 04 of 2004

M/s Jindal Photo Limited ……. Petitioner.
Versus
M/s consolidated Photo Product Ltd……
Respondents.

Date of decision: 01, November, 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant,

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Company Petition 06 of 2004
In
Company application No. 04 of 2004

In the matter of **M/s Jindal Photo Limited,**
UPSIDC Industrial Area,
Bhimtal-263 136, District Nainital
Uttaranchal
…… Transferor Company/Petitioner Company No.1

And

M/s Consolidated Photo Products Limited,
UPSIDC Industrial Area,
Bhimatal-263 136, District Nainital
Uttaranchal
……. Transferee Company/Petitioner Company No.2

Mr. Alok Singh, Senior Advocate assisted by Mr. Deepak Rawat, Advocate & Mr. Manish Lamba, Advocate, learned counsel for the Petitioner Company Nos. 1 and 2.
Mr. Pankaj Srivastava, learned Company Prosecutor (in person) on behalf of regional Director, Northern Region, Department of Company Affairs, Kanpur.

Hon'ble Prafulla C. Pant, J.

This petition is moved by M/s Jindal Photo Limited and M/s Consolidated Photo Products Limited (hereinafter referred as petitioner companies) under Section 391 read with Section 394 of the Companies Act, 1956 whereby sanction has been sought for the approval of the Scheme of Arrangement between them.

2) The Registered offices of both the Companies are at Bhimtal, District Nainital, which is within the territorial jurisdiction of this Court.

3) The Board of Directors of M/s Jindal Photo Limited (Transferor Company) as well as M/s Consolidated Photo Products Limited (Transferee Company have passed a resolution approving the Scheme of Arrangement. The present authorized share capital of the Transferor Company as on 31.03.2004 is Rs.690,000,000/-, out of this, issued share capital is Rs.428,823,920/- divided into 4,28,89,392 equity shares of Rs. 10/- each and subscribed and paid up capital of the said company is Rs. 427,120,420/-. On the other hand, the present authorized share capital of the Transferee Company as on 31.03.2004 is Rs. 5,00,000/- divided into Rs. 50,000/- equity shares of Rs. 10/- each. The entire authorized share capital of Rs. 5,00,000/- is issued, subscribed and paid up share capital of the said Transferee Company.

3) The main object of these Companies are stated in para 10 of the petition as under:-

(i) To carry on the business of manufacturing, converting, processing, assembling, treating, making, taking on hire, otherwise acquiring, blending, formulating packing, finishing, buying, selling, distributing, marketing, importing, exporting, fabricating or otherwise dealing in all types, grades, kinds, sizes and descriptions of photographic products like color/black and white photographic papers, roll films, cinema film, X-ray film, graphic art film, other film and allied products like photographic chemicals, regents, substances, equipment’s instruments, accessories, raw materials and things for audio-visual communications, film production, image and documents production, copying and information gathering, recording and processes related to photography, motion pictures.

(ii) To carry on the business of manufacturing, buying, selling, importing, exporting, assembling, creating, producing, preparing, converting, treating, altering, letting on hire, marketing, distributing and otherwise dealing in all types and descriptions of cameras, movie cameras, flash guns, lighting sets sound recording and reproduction machines and equipments, cinema overhead projectors, mini projectors, projectors, sound and film projection systems, color photo machines, color photo lab equipments and machines and all kind of spares, parts, accessories, components, tools, equipment, and apparatuses.

(iii) To carry on the business of manufacturing, converting, producing, processing, assembling, treating, making, blending, finishing, repairing, distributing, marketing, or otherwise dealing in all types and descriptions of video cassette recorders / players, editing tables, video cameras, multi cassette recording decks, video studios and the equipments thereof, colour television sets, video-scopes, video-scope screens, monitors and all kinds of accessories, spares, parts, components, tools, equipments, and apparatuses.

(iv) To carry on the business manufacturing, buying selling, converting, assembling, preparing, repairing, packing, blending, marketing, distributing and otherwise dealing in all kinds, descriptions and types of electrical / electronic / mechanical / automatic photocopying machines, zerox copying machines, typewriter ribbons and tools, continuous stationery, intercom and other communications machines and

all type of chemicals, substances, spares, components, accessories, tools equipments, instruments, apparatuses and the like used with or in connection to any of the above things.

5) Earlier the petitioner Companies filed application under Section 391 read with Section 393 / 394 of the Companies Act, 1956 (which was registered as Company Application No. 04 of 2004 before this Court) whereby direction was sought for dispensation with the requirement of the convening and holding of meeting of the equity share holders and creditors of the Transferee Company (for, there was no secured or unsecured creditors of the Transferee Company) and further direction was sought regarding convening and holding of meeting of share-holders and, secured & unsecured creditors of the Transferor Compnay for the purpose of considering and approval of Scheme of Arrangement. The said application was disposed of by this Court vide order dated 25.06.2004 dispensing with the meeting of share holders and creditors of the Transferee Compnay and, directing the convening of the meeting of equity shareholders and, secured & unsecured creditors of Transferor Company, Thereafter, meeting of the equity shareholders and, secured & unsecured creditors of the Transferor Compnay was held in terms of the orders of this Court and the report by the Chairperson was prepared. Finally, the present petition was moved with the said report for sanction of the Scheme of Arrangement under Section 391 read with Section 394 of the Companies Act, 1956.

6) In para 25 of the petition it has been stated that no proceedings under Section 235 to 251 of the Companies Act, 1956 are pending against the petitioner Companies.

7) As required, notice on this petition ere issued and duly served on the Regional Director, Northern Region, Department of Company Affairs, Kanpur, Notices were also advertised in the newspapers in compliance of the Court's order dated 01.09.2004. In response to which the Regional Director, Northern Region, Department of Company Affairs, Kanpur has field his representation/affidavit dated 25th October, 2004.

8) As per said representation / affidavit of the Regional Director of Department of Company Affairs, Kanpur it has been submitted that the authorized share capital of a company can be increased only after following the procedure prescribed under the relevant provisions of the Companies, Act, 1956 and payment of fee to the Registrar of the Companies and stamp duty to the State Government, therefore, exception has been taken to para 18 of the Scheme of Arrangement to that extent. Also, it has been stated that the name of the company can be changed only after following the procedure prescribed under the relevant provisions of the Companies, Act, as such exception has been taken to the Clause (b) of para 21 of Part- III of the Scheme of Arrangement. Similarly, in para 6.1 of the representation / affidavit of the Regional Director, it has been stated that the Memorandum of Association of a company can be amended only after following the procedure prescribed under the relevant provisions of the Companies Act and, therefore exception has been taken to the contents of para 229(a) of Part-III of Scheme of Arrangement.

9) I heard learned counsel for petitioner companies and also Mr. Pankaj Srivastava, Company Prosecutor (in person) on behalf of the Regional Director, Northern Region, Department of Company Affairs, Kanpur.

10) The objection as to the name of the company has become redundant in view of the letter dated 19.08.2004 issued by the

Assistant Compnay Registrar, Uttar Pradesh, Kanpur which was produced at the time of arguments, by learned counsel for the petitioner companies. Through said letter M/s Jindal Photo Limited has been informed about 'no objection' as to the change in the name of the petitioner companies. Also, under Section 21 of the Companies Act, the change of name can be brought about irrespective of the amalgamation / reconstitution by merely passing a special resolution and approval of the Central Government signified in writing, which condition appears to have been fulfilled here. Apart from this, no approval as to the change of name is required from the Court. The another objection of the Central Government regarding payment of requisite fee /stamp duty to the Government on the increased capital, the difference appears to be very little and learned counsel for the new Compnay (Jindal Photo Limited) states that the company is ready to pay the difference of the requisite fee as required under the laws. As to the other objections mentioned in the representation/ affidavit of the Regional Director, there appears to be no need to go through the same procedure again and against which has already been complied with under the Companies Act, before the report of the Chairperson is submitted by holding the extraordinary meeting of the share holders, and, secured & unsecured creditors of the Transferor Company in compliance of this Court's order dated 25.06.2004. Therefore, in view of the above reasons and principle of law laid down in ***Jaypee Cement Limited, In re*** reported in (2004) 52 S.C.L., pg. 801 (Allahabad), the objections have little force. This Court, is in agreement with the view expressed by the Bombay High Court in ***Vasant Investment Corporation Ltd. V. Official Liquidator*** reported in (1981) 51 Company Cases pg. 20 (at page 35) whereby it has been held that the whole purposed of Section 391 with regard to reconstitute the company is to permit it to do so without company being asked to make number of applications under Companies

Act for various alterations in the Memorandum of Articles and Association. Therefore, the petitioner company does not appear to be required to make separate applications under the Companies Act, 1956 in the circumstances, for alteration of its Memorandum of Association in such a matter particularly when the increase in the share capital is marginal.

11) In the aforesaid circumstances, in view of the above discussion, having regards to the averments made in the petition and the materials placed on record and affidavits filed, this Court is satisfied that prayers made in the petition deserve to the allowed. This Court does not find any legal impediment in granting sanction to the Scheme of Arrangement. Hence, sanction is hereby granted to the above-mentioned Scheme of Arrangement under Section 391 read with Section 394 of the Companies Act, 1956 with the condition that the new company M/s Jindal Photo Limited shall pay the requisite fee to the Registrar of Companies and the stamp duty, if any payable to the State Government in respect of the increased share capital.

12) The petition stands disposed of in terms of the above order.

(Prafulla C. Pant, J.)

Dt: 1st November, 2004
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